

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Case No. 2:20-cv-02600-SHL-cgc

JURY DEMAND

AMERICAN SPIRIT AND CHEER
ESSENTIALS, INC., et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.

Defendants.

Case No. 2:20-cv-02782-SHL-atc

JURY DEMAND

JESSICA JONES, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.

Defendants.

Case No. 2:20-cv-02892-SHL-tmp

JURY DEMAND

**PLAINTIFFS' CORRECTED NOTICE REGARDING THE DEPOSITION OF DAVID
OWENS AND DEFENDANTS' MOTION FOR SANCTIONS AND FOR PROTECTIVE
ORDER**

At the May 17, 2022 hearing regarding the length of the David Owens deposition, taking place that same day, Defendants' counsel stated that they were willing to agree to an extension of the length of the deposition to allow Plaintiffs to ask questions of Mr. Owens, provided Plaintiffs finished in one day. This was despite Defendants' stating earlier in the day that they would not agree to Plaintiffs' questioning Mr. Owens. (Mr. Owens and his counsel, who joined in Plaintiffs' request for guidance from the Chief Magistrate, had already agreed to extended hours or a second day, if necessary.) Chief Magistrate Pham stated that there was "a real possibility here that this issue gets resolved through the cooperation of both counsel and the deponents and deponent's attorney willingness to stay later in the evening. It sounds like pretty late. Maybe everyone can get their questions in and bring some resolution to this matter." The Court asked the parties to jointly file a notice after the end of questioning to inform the Court whether there remained any issues.

Defendants did not complete their questioning until 7:45 p.m., Eastern time, but Plaintiffs endeavored to—and did—shorten their examinations so that they could finish on May 17. That is, Plaintiffs sacrificed deposition time to which they were entitled in order to reach resolution on the issues surrounding the deposition. Given the fact that Defendants expressly gave their consent—in the Chief Magistrate's presence and on the record—to Plaintiffs' questioning Mr. Owens provided Plaintiffs finish their questioning on May 17, 2022, which Plaintiffs did, Plaintiffs submit that there are no remaining issues. Plaintiffs' position is that Defendants' motion seeking sanctions is now moot and should be withdrawn.

Earlier today, Plaintiffs drafted and shared with Defendants a draft notice informing the Court that there are no remaining issues and that Defendants' motion is withdrawn. However, Defendants replied that they did not agree and would be filing their own notice. Defendants filed

their notice two minutes after responding to Plaintiffs' email, continuing to seek sanctions for, among other things, Plaintiffs' reaching out to the Court for guidance, and Plaintiffs' providing Defendants with over a week's notice of their intent to question Mr. Owens—far more notice than Defendants have provided to Plaintiffs in the same situation. Given that the situation was resolved just as Defendants had agreed, Defendants' notice is nothing more than a waste of judicial resources.

Defendants have not been prejudiced in any way by Plaintiffs' questioning of Mr. Owens, which, as Defendants' counsel conceded at the hearing, is Plaintiffs' right and to which the witness and his attorney had expressly agreed. If anything, it was Plaintiffs who were prejudiced by Defendants' conduct.

Plaintiffs respectfully request an Order stating that Defendants' motion is denied as moot. In the alternative, Plaintiffs are ready to respond to Defendants' motion should the Court so require.

Dated: May 19, 2022

Respectfully submitted,

By: /s/ Joseph R. Saveri
Joseph R. Saveri

Joseph R. Saveri*
Steven N. Williams*
Ronnie Seidel Spiegel*+
Kevin E. Rayhill*
Elissa A. Buchanan*
David Seidel*
JOSEPH SAVERI LAW FIRM, LLP
601 California Street, Suite 1000
San Francisco, California 94108
Telephone: (415) 500-6800
Facsimile: (415) 395-9940
jsaveri@saverilawfirm.com
swilliams@saverilawfirm.com
rspiegel@saverilawfirm.com
krayhill@saverilawfirm.com
eabuchanan@saverilawfirm.com
dseidel@saverilawfirm.com

Van Turner (TN Bar No. 22603)
BRUCE TURNER, PLLC
2650 Thousand Oaks Blvd., Suite 2325
Memphis, Tennessee 38118
Telephone: (901) 290-6610
Facsimile: (901) 290-6611
vturner@bruceturnerlaw.net

Daniel E. Gustafson*
Daniel C. Hedlund*
Daniel J. Nordin*
David A Goodwin*
Ling Shan Wang*
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza
120 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 333-8844
dgustafson@gustafsongluek.com
dhedlund@gustafsongluek.com
dnordin@gustafsongluek.com
dgoodwin@gustafsongluek.com
lwang@gustafsongluek.com

Richard M. Paul III*
Sean R. Cooper*
Ashlea Schwarz*
PAUL LLP
601 Walnut, Suite 300
Kansas City, Missouri 64106
Telephone: (816) 984-8100
rick@paulllp.com
sean@paulllp.com
ashlea@paulllp.com

Jason S. Hartley*
Fatima Brizuela*
HARTLEY LLP
101 West Broadway, Suite 820
San Diego, CA 92101
Telephone: (619) 400-5822
hartley@hartleyllp.com
brizuela@hartleyllp.com

Attorneys for Jones Plaintiffs

H. Laddie Montague, Jr.*
Eric L. Cramer*
Michael J. Kane*
Mark R. Suter*
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19106
Telephone: (215) 875-3000
hlmontague@bm.net
ecramer@bm.net
mkane@bm.net
msuter@bm.net

Jonathan W. Cuneo*
Victoria Sims*
CUNEO GILBERT & LADUCA LLP
4725 Wisconsin Avenue NW, Suite 200
Washington, DC 20016
Telephone: (202) 789-3960
jonc@cuneolaw.com
vicky@cuneolaw.com
Karin E. Garvey*
Gregory S. Asciolla*
Veronica Bosco*

DICELLO LEVITT GUTZLER

60 East 42nd Street, Suite 2400
New York, NY 10165
Telephone: (646) 933-1000
kgarvey@dicellolevitt.com
gasciolla@dicellolevitt.com
vbosco@dicellolevitt.com

Interim Co-Lead Counsel for the Proposed Direct Purchaser Class

J. Gerard Stranch, IV (TN BPR #23045)
Benjamin A. Gastel (TN BPR #28699)
**BRANSTETTER, STRANCH &
JENNINGS, PLLC**
223 Rosa Parks Ave. Suite 200
Nashville, TN 37203
Telephone: (615) 254-8801
gerards@bsjfirm.com
beng@bsjfirm.com

Liaison Counsel for the Proposed Direct Purchaser Class

Benjamin D. Elga*
JUSTICE CATALYST LAW, INC.
81 Prospect Street
Brooklyn, NY 11201
Telephone: (518) 732-6703
belga@justicecatalyst.org

Roberta D. Liebenberg*
Jeffrey S. Istvan*
Mary L. Russell*
FINE KAPLAN AND BLACK, R.P.C
One South Broad St., 23rd Floor
Philadelphia PA 19107
Telephone: (215) 567-6565
rliebenberg@finekaplan.com
jistvan@finekaplan.com
mrussell@finekaplan.com
Nathan A. Bicks (TN BPR #10903)
Frank B. Thacher III (TN BPR #23925)
BURCH, PORTER, & JOHNSON, PLLC

130 North Court Ave.
Memphis, TN 38103
Telephone: (901) 524-5000
nbicks@bpjlaw.com
fthacher@bpjlaw.com

Aubrey B. Harwell, Jr. (TN BPR #002559)
Charles Barrett (TN BPR #020627)
Aubrey B. Harwell III (TN BPR #017394)
NEAL & HARWELL, PLC
1201 Demonbreun St., Suite 1000
Nashville, TN 37203
Telephone: (615) 244-1713
aharwell@nealharwell.com
cbarrett@nealharwell.com
tharwell@nealharwell.com

Counsel for the Proposed Direct Purchaser Class

Robert A. Falanga*
Kobelah Svensen Bennah*
LAW OFFICES FALANGA & CHALKER
11200 Atlantis Pl #C
Alpharetta, GA 30022
Telephone: (770) 955-0006
robert@falangalaw.com
kobelah@falangalaw.com

*Interim Lead Class Counsel for the Proposed
Independent Event Production Class, the Competitive
Recreational, College, High School or Junior High
School Student Parent Class, the Apparel, Athletic
Equipment and Merchandise Class, and the Cheer
Camp Market Class*

* Admitted pro hac vice

+Located in Washington State

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

Dated: May 19, 2022

By: /s/ Joseph R. Saveri
Joseph R. Saveri